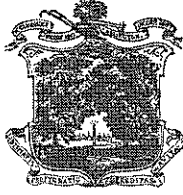


As adopted January 2009



**Town of Arlington  
Equal Opportunity Advisory Committee**

**730 Massachusetts Avenue, Arlington, MA 02476  
(781) 316-3120**

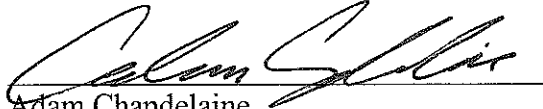
Tricia O'Donoghue, Chair  
Barbara Boltz  
Mahendra Desai  
Augusta Haydock  
Jack Jones  
Adrienne McClure  
Howard Winkler

Caryn Cove Malloy, Equal Opportunity Officer

**TOWN OF ARLINGTON  
EQUAL OPPORTUNITY PLAN**

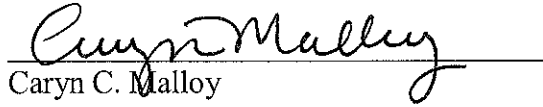
**PREAMBLE**

The Town of Arlington recognizes both its legal obligation and moral responsibility to provide Equal Employment Opportunity to its employees and potential employees. The Town of Arlington will fully comply with all laws, rules and regulations relating to fair employment which have been or may be issued by federal, state or local governing bodies and will fully commit itself to the prevention of discriminatory practices.



Adam Chapdelaine  
Town Manager

4/13/2012  
Date



Caryn C. Malloy  
Equal Opportunity Officer

5/16/2012  
Date

## **I. Statement of Policy**

### **Equal Opportunity Provision of Municipal Services**

It is the policy of the Town of Arlington to provide municipal services, including access to all municipal facilities, without regard to ethnic group, color, religion, national origin, gender, age, disability, sexual orientation, veteran's status or Vietnam Era Veteran.

### **Employment and Personnel Practices**

It is the policy of the Town of Arlington to select and employ qualified persons, without regard to ethnic group, color, religion, national origin, gender, age, disability, sexual orientation, or veterans' status, unless based upon a bona fide occupational qualification, and to administer all personnel functions, including but not necessarily limited to recruitment, selection and placement, promotion and transfer, compensation and benefits, layoffs and terminations, and training and education on a non-discriminatory basis.

### **Compliance with Laws**

The Town of Arlington will adhere to the provisions of all federal and state laws governing equal opportunity in employment and non-discrimination in municipal services. In implementing this policy, the Town intends to fully comply with the letter and the spirit of the law.

## **II. Responsibility for Implementation**

### **A. The Town Manager**

The ultimate responsibility for achievement of equal opportunity in the Town of Arlington, through this Equal Opportunity Plan, is assigned to the Town Manager. All personnel activities, including those related to employees not appointed by the Town Manager, shall be covered by this Equal Opportunity Plan.

### **B. The Equal Opportunity Officer**

The Town Manager shall appoint an Equal Opportunity Officer to be responsible for the day-to-day operations and implementation of the Plan. The Equal Opportunity Officer will report directly to the Town Manager. His/her responsibilities include, but are not limited to:

1. Submission of an annual report and other reports as necessary on the Equal Opportunity Program to the Town Manager; including recommendations to the Town Manager on employment goals, management objectives, timetables and changes in the personnel system.
2. Dissemination of the Equal Opportunity Plan both internally and externally.
3. Development of programs and guidelines for the implementation of the Plan at all levels.
4. Periodic monitoring of all aspects of personnel administration with reference to equal opportunity, including recruitment, screening, job specifications and qualification standards, career ladder and promotional opportunities and training opportunities.
5. Periodic discussions with department heads, supervisory personnel and others responsible for personnel actions to ensure that policies are understood and are being followed and to develop jointly implemented programs.
6. Periodic review of qualifications of all women and minorities to make certain that women and minority employees are given full opportunities for transfers and promotions.
7. Liaison between the Town and the Massachusetts Commission Against Discrimination (MCAD) and other governmental compliance agencies.

8. Liaison between the Town and appropriate organizations and community groups concerned with employment opportunities for minorities and women.
9. Maintenance of records of all Equal Opportunity activities.

**C. The Department Heads**

Each department head shall have direct responsibility for the implementation of effective Equal Opportunity measures in his/her department. Progress will be reviewed on a periodic basis by the Equal Opportunity Officer. Specific responsibilities include, but are not limited to the following:

1. Notify Personnel Department of all anticipated personnel actions as early as possible, including vacancies, terminations, transfers, promotions, demotions, new positions created, and requisitions for Civil Service lists, in accordance with Town personnel policies and procedures.
2. Develop job specifications, qualification standards and conduct interviews and testing in accordance with Equal Opportunity requirements.
3. Provide the Equal Opportunity Officer the opportunity and sufficient lead time to evaluate and make recommendations with respect to the recruitment, interview and selection process; to review all resumes and applications; and to make referrals.
4. Assist the Personnel Department and Equal Opportunity Officer in preparing an annual report of workforce composition for Equal Opportunity purposes.
5. Consult with Equal Opportunity Officer regarding annual goals and timetables for department.

**D. The Personnel Director/Equal Opportunity Officer**

The Personnel Director shall be responsible for collecting and maintaining records of all personnel transactions in a manner to facilitate the monitoring and evaluation of the Equal Opportunity program.

**E. The Employees at All Levels**

The actions of every person employed by the Town, at all levels, are important in achieving the objectives of this Plan. Disciplinary action shall be taken against anyone found to be deliberately obstructing the implementation of the Plan.

#### **E. Advisory Committee**

The Town Manager, subject to the approval of the Board of Selectmen, shall appoint an Equal Opportunity Advisory Committee to advise the Town Manager on the development and implementation of this Equal Opportunity Plan. The Advisory Committee may participate in the planning and design of programs to implement this Equal Opportunity Plan and may propose changes in the Plan. The Advisory Committee will be given the opportunity to review and comment upon proposed amendments to this Plan, employment goals and/or management objectives prior to their adoption.

The principal focus of the Advisory Committee is to ensure that people of all races and ethnic backgrounds are given equal opportunity to apply for and receive positions of employment here in Arlington. The Committee considers new and inventive ways in which to attract qualified minority applicants. The Committee closely monitors minority and female participation in all construction projects over two hundred thousand dollars and is committed to an awareness of the Town Bylaw on such projects with regard to female and minority participation goals.

#### **III. Analysis and Audit of Personnel Practices**

The Equal Opportunity Officer will examine all classification, qualification, recruitment, hiring, promotional and other employment practices in order to identify all such practices which may have contributed to the underutilization of minorities and women. Any practices which have adverse impact on the employment of minorities or women and which are not proven to be related directly to job performance will be modified or eliminated.

Initially, and periodically as determined by the Equal Opportunity Officer, the specific practices to be examined will include at least the following:

1. The procedures by which job descriptions and minimum experience and training requirements are established;
2. The recruitment system, including the procedures by which the hiring units assure Equal Opportunity in recruitment;
3. All application forms and related applicant processing documents.

In conducting the review of these practices, the Equal Opportunity Officer shall work in close consultation with Department Heads. The results of the review, including any recommendations for changes in the employment practices of the Town, will be stated in writing to the Town Manager, and upon his approval of the changes, shall be incorporated in any personnel policy or procedures documents and/or this Equal Opportunity Plan as may be appropriate.

#### **IV. Workforce Analysis**

The Equal Opportunity Officer will conduct an analysis of the Town's workforce on an annual basis. The purpose of the analysis is to initially, and periodically, review the presence of women and minorities employed by the Town, the positions held and the functions performed, and their distribution in all job classifications and at all wage and salary levels. In conducting the workforce analysis the following should be considered:

- a. The minority and female populations as a percentage of the total population of the Town and the Metropolitan Area Planning Council (MAPC) Region.
- b. The unemployment rate for minorities and women in the Town and MAPC region.
- c. The presence of minorities and women in the Town's workforce, in the Arlington labor force and MAPC Region.
- d. The availability of women and minorities having requisite skills in the area in which the Town can reasonably recruit.
- e. The availability of promotable and transferable women and minorities within the Town's workforce.
- f. The existence of training institutions capable of training persons in the requisite skills.
- g. The degree of training which the Town may reasonably undertake as a means of making all job classifications available to protected groups.

After analyzing the above factors, the Equal Opportunity Officer may recommend to the Town Manager changes in the personnel policies and practices, programs and management steps, and/or employment goals.

#### **V. Goals and Timetables**

The Town of Arlington is committed to provide equal employment opportunity to all persons. A concerted effort will be made to assure that all persons have equal access to the municipal employment system.

The Town has determined that the Metropolitan Area Planning Council (MAPC) Region is the appropriate labor market area for the Town of Arlington, that is, the geographic area in which the Town may reasonably recruit persons for employment or reasonably expect to attract applicants. The MAPC Region is composed of 101 contiguous communities, with Boston as its core city.

Arlington has accepted the percentages of the MAPC Region as the goals for the composition of the Town's workforce. The proportions of women and minorities in the MAPC Region are: minorities 19% (nineteen percent) and women 52% (fifty-two percent); source MAPC Region *Profiles of General Characteristics Census 2000*.

It is the Town's objective to achieve the 19-52 composition of the workforce as soon as is reasonably practicable. Each job classification and department will be

considered individually, and reasonable goals and timetables established annually, based on the anticipated results of a vigorous recruitment effort.

## **VI. Monitoring Performance**

Monitoring the Town's performance and progress in meeting its Equal Opportunity goals is important, especially in assessing the effectiveness of various recruitment sources and techniques and of the personnel system as a whole.

The Equal Opportunity Officer will develop the procedures necessary to maintain at least the following records in support of the Equal Opportunity Plan:

1. Applicant flow, by ethnic group, gender, and source of applicants;
2. Hires by ethnic group, gender, and national origin;
3. Initial placement after hired, where assigned, and position, by ethnic group, gender and national origin;
4. Transfers and promotions, by ethnic group, gender, national origin, position and department from which transferred or promoted, and position and department to which transferred or promoted; and
5. Voluntary and involuntary terminations, by ethnic group, gender, national origin, type of termination and the reason therefore.

The Equal Opportunity Officer will review the above records on a periodic basis to assure compliance with the Equal Opportunity Plan, especially the employment goals contained therein.

The Equal Opportunity Officer will prepare an Annual Report to the Town Manager, and other period reports as may be appropriate, regarding compliance with the Plan and progress toward objectives. These reports will contain recommendations for changes the Equal Opportunity Officer believes are necessary to correct deficiencies or improve the performance of the program.

## **VII. Personnel Procedures**

Uniform personnel policies and practices which are consistently administered are the surest way of assuring equal opportunity. Every effort will be made to review periodically, to revise if necessary, and to maintain standardized personnel procedures for all positions in all departments.

### **A. Civil Service Positions**

Many of the employees of the Town of Arlington are civil service employees. The Town is required to employ, transfer, promote and terminate persons in civil service positions in accordance with Chapter 31 of the Massachusetts General Laws, as administered by the Massachusetts Human Resources Division (HRD). When filling a vacancy, the Town is provided with a certified list of candidates by HRD from



which the Town must appoint if it is to fill the position. In the past, women and minorities have been underrepresented on civil service lists at all levels.

In situations where a civil service list for hiring is not available and a position may be filled, the Town may make a provisional appointment which will stand until a list is available. The Town will follow the procedures described below for non-civil service positions to affirmatively recruit qualified women and minorities for provisional appointments, and then to encourage them to take the appropriate civil service examinations.

The Town will request PAR 10 on civil service requisitions for positions in job categories where minorities or women are underutilized. A PAR 10 certification is a special certification based on race, color, national origin or sex. The Equal Opportunity rule permits consideration of three additional minorities or women candidates.

## **B. Non-Civil Service Positions**

Certain Town positions are exempted from civil service coverage by state law. Under Massachusetts Law (Chapter 31 of the Massachusetts General Laws) which is further defined by the Arlington Town Manager Act, there are five appointing authorities for the Town of Arlington (not including the School Committee): Board of Selectmen, Town Manager, Town Treasurer/Tax Collector, Town Clerk and Board of Assessors. Nearly all appointments are made by the Town Manager, with the remaining positions coming under the various elected officials.

In order to insure that all area citizens are given equal opportunity in employment, the Town has developed and implemented uniform hiring procedures for positions not under the jurisdiction of civil service or for which a civil service list is not available including, but not limited to, the following:

1. Review job descriptions and qualifications to assure they are unbiased and not overly restrictive.
2. Develop an appropriate search strategy for qualified women and minorities for the particular positions covering all facets of the employment process, including scope of search, time and cost commitment.
3. Advertise positions in the local newspaper, regional newspapers, periodicals serving minority communities, professional or special interest journals as needed or dictated by the search strategy. All advertisements will indicate that the Town is an Equal Opportunity Employer.
4. Post notices of all employment opportunities in Town Hall, the Personnel Office, the Town's web site and other locations in municipal facilities. Send notices and/or contact appropriate employment resources and groups and organizations which assist, or whose membership includes, members of protected groups. The

- posting period will be of sufficient duration to allow time for interested persons to apply.
5. Maintain personnel and employment records in a manner to facilitate analysis of the workforce and to document the efforts of the Equal Opportunity program (e.g. applicant flow, recruitment contacts, advertising).
  6. Develop standardized personnel forms, including applications forms, which are consistent with the Town's equal opportunity policy.

## **VII. Training Programs**

The availability of training opportunities is essential to an Equal Opportunity program concerned with upgrading of employment for women and minorities.

Information on training programs and educational opportunities will be available from the Equal Opportunity Officer.

Department heads are responsible for encouraging all employees, especially women and minorities, to take advantage of training programs to the extent their interest and aptitude will allow. Career development counseling and referral will be available through the Personnel Office.

Release time for individuals taking short job-related seminars sponsored by a professional organization or educational institution will be given consideration on a case-by-case basis in consultation with the department head. If funds are available, tuition assistance will also be considered. Information on such opportunities will be made available at the Personnel Office. Completion of such courses will be noted in personnel records.

Civil Service information and assistance for employees and the general public wishing to enter or advance with the system is provided by the Personnel Office.

## **IX. Dissemination of the Plan**

Every effort shall be made to communicate the commitment expressed in this Equal Opportunity Plan to present and prospective Town employees and the public.

### **A. Internal**

1. Copies of the Plan will be available in the Personnel Office, Main Library and Town website: [www.arlingtonma.gov](http://www.arlingtonma.gov) for any employee or citizen to read.
2. The Equal Opportunity Officer will be responsible for the posting of information regarding equal employment opportunity, and of non-discrimination laws in places where policy and related materials are available to all employees and prospective employees.
3. All employees will be advised of the procedure for handling complaints of discrimination.

4. All prospective employees coming to the Personnel Department will be advised that the Town is an Equal Opportunity employer.

**B. External**

1. All printed advertisements, job announcements, posters, brochures, personnel forms and similar material will indicate that the Town of Arlington is an Equal Opportunity Employer.
2. Employment application forms will indicate the Town is an Equal Opportunity employer.
3. A notification letter will be sent to various employment sources and to organizations serving protected groups informing them of the Equal Opportunity policy. All Town jobs will be advertised in minority publications in order that these groups will be advised of job openings and encouraged to refer candidates for available positions.

**X. Staff Orientation in Equal Employment Opportunity**

Responsible supervisory personnel will be given orientation sessions regarding the provision of the Plan and equal employment opportunity law in general, in addition to receiving copies of this Plan. Update sessions will be held periodically, with responsibility for EEO orientation and training sessions assigned to the Equal Opportunity Officer.

All employees who have any direct responsibilities in the selection process will receive the equivalent of at least one full day of orientation regarding this Equal Opportunity Plan, as well as general training with regard to the provisions of equal employment law. Included among the topics will be the special obligations of personnel staff members in assuring the success of the Town's Equal Opportunity Plan.

Special meetings or orientation sessions will be organized under procedures developed by the Equal Opportunity Officer to inform non-supervisory personnel of their rights and obligations under the Equal Opportunity Plan.

New employees will be advised of the Town's equal opportunity policies and Equal Opportunity program during orientation sessions.

**XI. Complaint Procedures**

These complaint procedures have been developed with the intent of providing an informal mechanism for the resolution of grievances relating to the discrimination forbidden by the Town's Equal Opportunity Policy, a mechanism which may be faster and more responsive to an employee's or applicant's needs than a formal process. The use of the complaint procedure is not intended to preclude an employee or job applicant from utilizing those other remedies to which he/she is entitled,

including those set forth in any relevant collective bargaining agreement or those available under state and federal law.

#### **A. Present Employees**

1. Coverage – This procedure applies to all grievances which may arise in matters of general personnel administration in which it is alleged that deferential treatment was afforded to a member of a protected group on the basis of sex/gender, age, national origin, race, color, religion, handicap/disability, sexual orientation, genetic carrier status or active military status. It is supplemental to any procedures established through collective bargaining agreements or by law.
2. Eligibility – Any employee or applicant who believes that he or she has been discriminated against through the action of another employee, or supervisor, or other person acting for the Town may bring an informal grievance under these procedures.
3. Interpretation of Coverage – Where a dispute exists as to whether a particular matter is subject to coverage by these grievance procedures, the Town reserves the right to make the final judgment on that question through the Equal Opportunity Officer and Town Manager. Application of these procedures will be denied in instances where the appealing party is not involved, or where there is good reason to believe that the grievance has been brought in bad faith.

#### **B. Informal Grievance Procedure**

1. The employee should first discuss the grievance with the immediate supervisor.
2. If the grievance remains unresolved, the employee may discuss it with his/her department head.
3. If circumstances of the grievance prevent using step 1 and/or step 2, or if the department head does not resolve the grievance within a reasonable period of time, the employee may discuss the grievance with the Equal Opportunity Officer.
4. If the grievance is judged to be valid and to have resulted from an application of personnel policies, the Equal Opportunity Plan, or employment law on the basis of discriminatory criteria as a member of a protected group as described in Section A, the Equal Opportunity Officer will bring it to the attention of the Town Manager, who will review the grievance and take whatever appropriate administrative steps to enforce the policies, the Plan or law he or she deems appropriate.
5. If the grievance involves a question of judgment or opinion not covered by the personnel policies, the Equal Opportunity Plan or employment law, the Equal Opportunity Officer may counsel with the employee, the supervisor and/or department head to resolve the grievance, if possible. The matter may be brought to the attention of the Town Manager, by either party, for final resolution.
6. Any retaliatory action of any kind taken by any employee of the Town against any other employee as a result of that person's seeking redress under these

procedures, cooperating in an investigation, or otherwise participating in any proceeding under these procedures is prohibited and shall be regarded as a separate and distinct grievable matter under these procedures.

The Equal Opportunity Officer shall be granted the authority to carry out the following activities under the director of the Town Manager.

1. To receive and attempt to resolve complaints on an informal basis.
2. To provided aggrieved persons with information on equal opportunity procedures including local, state, and federal redress procedures, including the option to file a complaint within six months with the Equal Employment Opportunity Commission, the Massachusetts Commission Against Discrimination or with any state or federal agency from which funds are received.
3. The Equal Opportunity officer shall make every effort to resolve the problem informally. To this end, the Equal Opportunity Officer may, if requested by the complainant, assist in discussions with the supervisor or any other party to the problem and may take other steps which may assist in the resolution of the problem.
4. The aggrieved person has the right to representation. If the aggrieved person and/or their representative is an employee of the Town, they shall be given a reasonable amount of time during the working day to prepare and present a request for a solution of the grievance.

## **XII. Employee Unions**

The Town recognizes six municipal employee unions as collective bargaining agents and is signatory to the collective bargaining agreements. These agreements contain, or will contain in the future, clauses prohibiting discrimination.

The Town recognizes its obligation under these agreements and will adhere to them in the implementation of this Equal Opportunity Plan.

## **XII. Construction Contracts**

The Town recognizes the important role which equal employment opportunity requirements and goals can play in eliminating and remedying discriminatory barriers in the terms and conditions of employment in the construction industry. The federal government and the Commonwealth of Massachusetts also recognize this role and have stringent requirements for projects in which federal and state monies are involved. The Town also recognizes and enforces the equal employment opportunity language for construction contracts as stated in the Town of Arlington Bylaws, Title I, Article 16 Construction Projects. Such laws include at the State level: Construction Reform Law, Chapter 193 of the Acts of 2004 and the revisions made to M.G.L. c.23A, §44 and M.G.L. c.7, §40N, and the School Building Assistance Program, funding under M.G.L. c.90, §34, and Executive Order No. 478. At the Federal level such laws include:

Standard Federal Equal Opportunity Construction Contract (Executive Order 11246 as amended).

The equal employment opportunity requirements which the Town will incorporate in bid specifications and construction contracts will vary, depending on the funding sources for each particular project, as follows:

1. Federally-assisted Projects
2. State-assisted Projects
3. Town Funds-only Projects

The Equal Opportunity Officer and/or Purchasing Officer will be responsible for preparing EEO materials and specifications, for conducting pre-construction EEO conferences, and for monitoring the compliance of contractors in regard to their equal employment opportunity requirements. He/She may be assisted by the Grant Administrator if one has been appointed for any particular project.

The Town Manager's Equal Opportunity Committee shall advise the Town on relations between the Town, contractors, construction unions and minority communities and organizations.

#### **XIV. Amendments**

As conditions in the workforce and the labor market change and as changes in personnel policies and practices become necessary, the various elements of the Plan may need to be modified. Changes in this Plan may be proposed by the Equal Opportunity Officer or Equal Opportunity Advisory Committee, as well as the Town Manager. The Advisory Committee will have the opportunity to review and to make recommendations on any substantive changes proposed by either the Equal Opportunity Officer or the Town Manager. Changes in this Plan are the final responsibility of the Town Manager.

## **GLOSSARY**

**ACCESSIBILITY:** Readily accessible to and usable by individuals with disabilities.

**ALTERNATIVE PROGRAMS:** Programs administered through the Department of Personnel Administration Certification which use the Civil Service selection procedures to reach targeted protected classes.

**APPLICANT FLOW:** The process of records of hiring, promotions, and other employment actions for the purpose of monitoring. Applicant flow analysis assures that the employer's employment practices and procedures are accomplished within the guidelines of the Equal Opportunity Plan.

**ARTIFICIAL BARRIER:** A requirement placed on a job or on an individual performance within the job which is neither job-related nor consistent with merit principles.

**CANDIDATE FOR EMPLOYMENT:** An individual who has applied for and has been interviewed for a Town posted job opening.

**COLOR:** The hue or pigmentation of the human skin.

**COMPLAINT:** A pleading by which a legal action is commenced under Federal or State courts or administrative agencies. The complainant applies to the courts or agencies for legal redress.

**DISABILITY:** A physical or mental impairment which substantially limits one or more major life activities, a record of such impairment, or regarded as having such impairment.

**EQUAL EMPLOYMENT:** An employer's posture that all personnel activities will be conducted in a manner to assure equal opportunity for all. Such activity is based solely on individual merit.

**EQUAL OPPORTUNITY PLAN:** A written document outlining those steps to be taken to bring about Equal Opportunity.

**GOALS:** A numerical objective, fixed realistically, based on the number of vacancies expected and the number of qualified applicants available to the job market.

**GRIEVANCE:** As used in this Plan, the filing of allegations with the Office of Equal Opportunity with the purpose of addressing a harassing or discriminatory situation in an expeditious manner.

**JOB RELATED:** Aspects of a job, which are essential to the performance of the specific task.

**MINORITY:** A group comprising less than half of a population and differing from a larger, predominant group, as in race, religion, political affiliation.

**BLACK:** All persons having origins in any of the Black racial groups of Africa.

**HISPANIC:** All persons of Puerto Rican, Dominican, Cuban, Mexican, or Central or South America or other Spanish culture or origin, regardless of race.

**ASIAN:** All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands.

**NATIVE AMERICAN:** All persons having origins in any of the original peoples of North America excluding Mexico, and who maintain cultural identification through tribal affiliations or community recognition.

**ESKIMO & ALEUTIAN:** All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska or Eastern Siberia.

**CAPE VERDEAN:** All persons having origin in any of the original peoples of Cape Verdean Island who are of Black Heritage.

**PROTECTED GROUPS:** Legally identified groups that are specifically protected by the statute against employment discrimination.

**PROFESSIONALS:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge.

**QUALIFIED PERSON WITH A DISABILITY:** A person who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

**RACE:** A subdivision of mankind having a relatively constant set of physical traits such as color of skin and eyes, stature, texture of hair. Any grouping of peoples according to geography, nation, etc.

**REASONABLE ACCOMMODATION:** The changing of environments or schedules, or the requirement to adapt to the known physical or mental limitations of qualified disabled applicant or employee. The accommodation may include, but not be limited to, job restructuring, part time or modified work schedules, acquisition or modification of equipment or devices, the provisions of readers or interpreters, or other similar actions.



## PRE-EMPLOYMENT QUESTIONS FACT SHEET

Massachusetts General Laws Chapter 151B, Section 4; CMR 3.01 et seq.

The Fair Employment Practices Law guarantees that no person shall be denied the right to work because of his or her race, color, religious creed, national origin, sex, sexual orientation, age (40 years and over), criminal record, mental illness, or disability. In order to comply with this law, an employer should generally not ask on a job application or during an interview any question that:

identifies a person on a basis covered by the Fair Employment Practices Law; or  
results in the disproportionate screening out of members of a covered group; or  
is not a valid predictor or successful job performance.

The following table lists examples of questions that are and are not permitted to be asked on employment application forms or during employment interviews.

TOPIC	EMPLOYERS MAY ASK	EMPLOYERS MAY NOT ASK
Age	Are you a minor (under the age of 18)? May I have proof that you are 18 or over?*	When were you born? Are you over 40?
Criminal record	Have you ever been convicted of a felony? Within the last 5 years have you been convicted of, or released from incarceration for a misdemeanor that was <i>not</i> a first offense for drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace? If you have been convicted of any criminal offense within the last five years, were you, at any point more than five years ago, convicted of any misdemeanor (not including a first conviction for first offense for drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace).	Have you ever been arrested? Have you ever been convicted of a misdemeanor? Nor may an employer request a copy of your arrest or probation record. Cannot ask about any misdemeanor conviction more than five years ago, unless convicted of subsequent offense within the last five years.
Education/ Experience	What school, college, or vocational program did you attend? Graduate? What is your work experience?	Questions about dates of graduation/work experience should not be used to determine applicant's age.
Handicap/	Are you able to perform the	Do you have any handicap

Disability	essential functions of the position with or without reasonable accommodation? Can you describe how you would perform the following job functions (list specific essential functions of the job)? Can you describe how you would perform the following job functions (list specific essential functions of the job)? No other questions.	disability? Do you have any medical problems? Do you have any job related handicaps or limitations that would prevent you from doing the job? Have you ever received Worker's Compensation? Have you ever been hospitalized? Are you currently taking medication?
Immigrant Status	Are you legally authorized to work in the U.S.? The Federal Immigration Reform and Control Act of 1986 (IRCA) requires employers to ask all employees hired after Nov. 6, 1986 to produce documentation proving that they are authorized to work in the U.S. This information may be requested only after an offer of employment has been made. Employers must be careful to accept all types of documentation permitted under IRCA.	Information obtained through compliance with IRCA may not be used to discriminate on the basis of national origin, nor may it be kept with the employee's personnel records. Documentation proving work authorization must be requested of all new employees, not just those who are "foreign-looking."
Military Experience	Are you a U.S. veteran? What is your U.S. military service history?	Are you receiving a service-connected disability pension? What is your foreign military service history? What was the nature of your discharge?
National Origin or Ancestry	No questions	What is your language ancestry, or national origin? Where were you born? Where are your parents or spouse from? What is the origin of your name? Are your parents or spouse citizens?
Race	No questions	What is your race? Color? (Nor may an employer require that a photo accompany an application.)
Religion	No questions	To what religious denomination, church, or synagogue do you belong? What are your religious obligations? What religious holidays do you observe? Do you go to church regularly?
Sex	No questions*	What is your maiden name? (Nor

		any question that pertains to only one sex.) Do you have any children? Do you intend to have children? What child care arrangements have been made? No questions may be asked of only one sex.
Sexual Orientation	No questions	Are you gay/lesbian/bisexual/heterosexual? Why aren't you married? Questions about relationships or living arrangements should not be used to determine sexual orientation.

Note: Medical examinations may be administered only after a conditional offer of employment.

Of course there are other questions not listed above that could be construed as attempting to elicit information for the purpose of discriminating on the basis of a category covered under Massachusetts anti-discrimination laws. Consider and document only job-related factors.

\*Certain questions pertaining to age or sex may be permissible if they relate to a *bona fide occupational qualification*, which is a criteria for employment that the Massachusetts Commission Against Discrimination has ruled is a legitimate requirement for a particular position (for example, the sex of an applicant for an acting job [a role in a play] may be a *bona fide occupational qualification*). Questions about age may also be allowed if necessary to satisfy state or federal provisions (for example, certain public safety positions presently have age limits for hiring and retiring).